IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WA.No. 1672 OF 2006()

AGAINST THE JUDGEMENT IN WPC.16004/2004
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APPELLANT: PETITIONER.

V.DHARMARATNAM, S/O. VELAYUDHAN,
VALIYAMMAKANDI HOUSE, THALAKULATHOOR P.O.,
KOZHIKODE, RETIRED EXECUTIVE OFFICER,
KIZHUPARAMBU PANCHAYATH, KOZHIKODE.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN

RESPONDENTS: RESPONDENTS.
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PANCHAYATS,
THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF PANCHAYAT,
MALAPPURAM.

GOVERNMENT PLEADER SRI. SANDESH RAJA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 8/03/2007, THE COURT ON 12.3.2007, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A. NO. 1672 OF 2006

DATED THIS, THE 12TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Appellant is the petitioner in W.P. (C) 16004/2004. The said writ petition was filed challenging Ext.P6 Government Order - G.O.(Rt) No. 1212/2004/LSGD. dated 1.4.2004, by which the period of his suspension during the pendency of the criminal proceedings against him was treated as leave without allowances except for the purpose of subsistence allowance already drawn. It was the contention of the appellant that he was kept under suspension on 8.6.1983 at a time when there was no criminal case pending against him. Subsequently, a criminal case as C.C. 84/1996 was registered and he was ordered to continue under suspension. Later, by judgment dated 23.4.1997 of the Judicial Magistrate of First Class, Manjeri, he was convicted. He challenged the order of conviction by filing Crl. A. 77/1997 before the Sessions Court, Manjeri, which was eventually allowed as per judgment dated 29.9.2001, whereby his conviction and sentence were set aside. The appellant was accordingly reinstated in service on 29.11.2002

and he retired from service on superannuation on 31.3.2003. His claim for salary for the period during which he was placed under suspension was declined by the Government, as per Ext.P6 Order. The appellant impugned Ext.P6 by filing the writ petition as stated above, on two grounds , namely, that the appellate court having found that the conviction cannot be sustained on merits as well as on the ground that the prosecution was without sanction and hence the conviction was not sustainable and thus, he having been honourably acquitted he is entitled for full salary for the period during which he was kept out of service. The learned Single Judge held that the acquittal appears to be on technical ground and not based on any evidence and in that view, it cannot be said that the appellant was fully exonerated of the charges levelled against him. On that ground, the relief was declined, against which the present appeal is preferred.

2. At the outset, we may state that the finding of the learned Single Judge that the appellant was acquitted only on the basis of any technical ground does not appear to be correct. Ext.P4 produced in the writ petition is the judgment of the Sessions Court in Crl. A. 77/1997. On a perusal of the same, it is seen that the appellate court found, after due consideration of the evidence on record, that the appellant cannot be fastened with any criminal liability. It was held in para 4 of the judgment, after adverting to the

evidence in the case as follows:

> "In the circumstances there cannot be any falsification of accounts or documents or misappropriation of the panchayat funds as alleged by the prosecution. If at all there is any irregularity, it is only with regard to the withdrawal of the amount by a self cheque. But that does not in any way fasten the accused with any criminal liability."

3. It then considered as to whether the prosecution could be sustained for want of any sanction under Section 197(1) of the Code of Criminal procedure. After considering the point, it was held that the appellant who is an Executive Officer of the Panchayat, is a public servant as defined under Section 21 of the Indian Penal Code and therefore sanction under Section 197(1) Cr.P.C. is necessary for prosecuting him since the offence was committed in the discharge of his official duty by committing the offence of criminal breach of trust and falsification of accounts. Reliance was also placed on the decision of this Court in **Issac v. State of Kerala** (1996(1) KLT 391) and it was held as follows:

> "Admittedly, no sanction has been obtained in the instant case for prosecuting the accused. The court below should not have taken cognizance of the offence for want of necessary sanction. The prosecution against the accused who is alleged to have committed the offence in the discharge of his official duty, therefore, is not legally sustainable for want of sanction under Section 197(1) Cr.P.C. In

> any view of the matter, the verdict of the lower court is liable to be set aside."

4. Thus, it can be seen that the appeal was allowed and conviction set aside not only on the ground of want of sanction, but also on the merits of the case. We may now proceed to consider whether the appellant is entitled for any relief on the merits of the contentions raised.

5. It is beyond dispute that during the period of suspension the appellant was paid subsistence allowance only for the period from June, 1983 to November, 1983. There was no separate disciplinary action initiated against him and the appellant requested for regularization of the period of suspension from 8.6.1983 to 29.11.2002 as on duty. The said prayer was turned down by the Government, by its order Ext.P6 and his suspension period was regularized as duty for the purpose of pension limiting the pay and allowance to subsistence allowances already drawn.

6. Rule 55, Part I, K.S.R. provides that an officer under suspension or deemed to have been placed under suspension by an order of the Appointing Authority is entitled to subsistence allowance at an amount equal to the leave salary which the officer would have drawn had he been on leave on half-pay on the date of suspension; but the benefit of any increase in pay due to increment falling due during the period of suspension will not be admissible during the period. In addition, he may be granted to

such extent and subject to such conditions as the authority ordering his suspension may direct (i) Dearness Allowance and Dearness Pay not exceeding the amount admissible as such had he been on leave on leave salary equal to the rate of subsistence allowance payable from time to time and (ii) any other compensatory allowance to which he was in receipt on the date of suspension. As per Note 3 thereunder, it is stated that no payment under the rules shall be made unless the officer furnishes a certificate that he is not engaged in any other employment, business, profession or vocation and in case of Non-Gazetted Officers, the certificate signed by the officer should be countersigned by a Gazetted Officer, in token of acceptance. In the case of Gazetted Officers, payment of subsistence allowance be authorized by the Accountant General on the basis of the sanction issued by the competent authority and the Treasury Officer will pay the allowance only if a similar countersigned certificate is attached to the bill claiming it.

7. According to the appellant, once his conviction is set aside and he is acquitted of the charges levelled against him, he is automatically entitled for the full salary during the period of suspension, especially in the absence of any separate disciplinary action taken against him. We are however, unable to accept this contention as such, because the claim for entitlement

of salary during the period of suspension has to be dealt with in accordance with Rules. As per Rule 56 of the Kerala Service Rules, the authority competent to order reinstatement shall consider and make a specific order regarding the pay and allowances to be paid to the officer for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be and whether or not the said period shall be treated as a period spent on duty. As per Rule 56(2) where the authority competent to order reinstatement is of opinion that the officer who had been dismissed, removed or compulsorily retired, has been fully exonerated, the officer shall, subject to the provisions of sub-rule (6) be paid the full pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be. As per the proviso to Rule 56 (2), where such authority is of the opinion that the termination of the proceedings instituted against the officer had been delayed for reasons directly attributable to the officer, it may, after giving him an opportunity to make his representation and after considering the representations, if any, submitted by him, direct, for reasons to be recorded in writing that the officer shall, subject to the provisions of sub-rule (7) be paid for the period

of such delay, only such amount (not being the whole) of such pay and allowances as it may determine. In a case falling under sub-rule (2) the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

8. Even though this rule refers to dismissal, removal or compulsory retirement and any of such punishment imposed on the officer concerned, in the absence of any other rule, the principles contained therein has to apply even in cases where suspension continues merely for the reason of the pendency of the criminal case which ended in conviction and thereafter set aside in appeal. The authorities have also applied this rule by regularizing the period of suspension while issuing Ext.P6 order. Therefore, it is for the authorities to consider for forming an opinion as to whether the officer has been fully exonerated and whether he should be paid full pay and allowances subject to the provisions of sub-rule (6). If the case falls under sub-rule (2) as noticed above, the period of suspension shall be treated as period spent on duty for all purposes.

9. Now we will examine Ext.P6 and the reasons stated thereunder for limiting the subsistence allowances already drawn by during the period while the appellant was under suspension. Ext,P6 states that the acquittal

of the appellant was not an honourable one and evidently his suspension was not wholly unjustifiable. On a reading of the judgment Ext.P4 as already indicated in the above paragraph, the appellant was acquitted not only on technical ground, but also he was acquitted after finding that the charges itself are not proved in evidence. The relevant finding has already been extracted in the above paragraph. In the above circumstances, the reasoning given in Ext.P6 that the acquittal was not an honourable one and evidently his suspension was not wholly unjustifiable is clearly wrong, illegal and unsustainable.

Since this is the only reason for declining the relief, Ext.P6 is accordingly, quashed. The Government will reconsider the matter afresh and pass appropriate orders.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-